

BEFORE THE NEIGHBORHOOD COMMISSION

CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of

Kenneth William LeVasseur

Complainant,

v.

Flora Obayashi

Respondent.

COMPLAINT NO. 2018-03

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER

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A complaint hearing was held at a Special Meeting of the Neighborhood Commission on October 22, 2018, at Kapalama Hale, First Floor Conference Room, 925 Dillingham Boulevard, Honolulu, Hawaii 96817. KEN LEVASSEUR (“Complainant”) personally appeared. Respondent FLORA OBAYASHI (“Respondent”) personally appeared.

The Commission, having reviewed the Complaint, Response, exhibits and other documentary evidence presented by the parties; having considered the entire record and files herein; and having heard testimony and considered the arguments of the parties; makes the following Findings of Fact, Conclusions of Law, Decision and Order.

FINDINGS OF FACT

1. The Complaint was filed on or about June 22, 2018, pursuant to the provisions of Section 2-18-101(a)(3) of the 2008 Neighborhood Plan, as amended (“Plan”).
2. Complainant alleges a violation of the Plan under Sections 2-14-101 and , 2-14-123 that occurred on April 25, 2018.

3. At all times relevant herein, Respondent was a member of the Kahaluu Neighborhood Board No. 29.

4. On June 13, 2018, Respondent was notified of the Complaint and was provided the opportunity to respond to the allegations of the Complaint. The Commission received a response from Respondent on July 30, 2018.

5. On September 5, 2018, in accordance with Hawaii Revised Statutes ("HRS") Sections 91-9 and 91-9.5, notice of the hearing was provided to the Respondent via certified mail, return receipt requested.

6. With respect to Subsections (a), (b), (c) and (d) of Section 2-14-101, Oath of Office, the Plan provides that:

(a) Before entering upon the duties of office, each member elected or appointed shall subscribe to the following oath or affirmation before a current member of the Neighborhood Commission, the Executive Secretary, a current employee of the Neighborhood Commission Office or a notary public: "I solemnly swear (or affirm) that I will faithfully support the Constitution and laws of the United States of America, the Constitution and laws of the State of Hawaii, the charter and laws of the City and County of Honolulu, and the provisions of the neighborhood plan, and will conscientiously and impartially discharge my duties, to the best of my ability, as a member of the neighborhood board to which I have been elected (or appointed)." (b) Newly elected or appointed members shall not assume the duties of office, participate in the election of officers, or otherwise conduct board business until they subscribe to the required oath or affirmation of office. (c) A member shall be disqualified and the seat vacant if a member fails to subscribe to the required oath of office within sixty days after: (1) The date the board term begins; or (2) If filling a vacancy, the date of appointment by the board or the commission. (d) Newly elected members who are unable to take the oath of office within the sixty day time period due to military service or other extraordinary circumstances, may request an extension of time from the Executive Secretary.

7. With respect to Subsections (b)(12), (13) and (18) of Section 2-14-123, Duties of Officer, the Plan provides that:

(12) At a duly noticed meeting appoint and remove all committee chairs, unless otherwise directed by the board. If a committee chair resigns, the board chair may appoint a committee chair pro-tem. (13) At a duly noticed meeting appoint and remove all board delegates, unless otherwise directed by the board. If a board delegate resigns, the board chair may appoint a delegate pro-tem....

(18) Perform any other duty as may be assigned by the board, as may properly appertain to the office, or as may be required by law.

8. The Commission finds that the evidence did not support any violation of the Oath of Office as set forth in Subsections (a), (b), (c) and (d) of Section 2-14-101 of the Plan.

9. The Commission finds that the evidence did not support any violation of Subsections (b)(12), (13) and (18) of Section 2-14-123 of the Plan.

10. With respect to Subsections (a), (b), (c) and (d) of Section 2-14-101, Oath of Office, there was a motion that the Commission finds there was no violation of Section 2-14-101 of the Plan, which was seconded. The Commission, with six commissioners present, having heard the arguments of the Complainant and Respondent, after considering all the evidence, finds that the Complainant did not meet his burden of proof of proving that the Respondent violated the Plan by a Preponderance of the Evidence. The Commission, by unanimous vote, adopted the motion that there was no violation of Section 2-14-101 of the Plan.

11. With respect to Subsections (b)(12), (13) and (18) of Section 2-14-123, Duties of Officers, there was a motion that was seconded to dismiss the Complaint. The Commission, with six commissioners present, having heard the arguments of the Complainant and Respondent, after considering all the evidence, finds that the Complainant did not meet his burden of proof of proving that the Respondent violated the Plan by a Preponderance of the Evidence. The Commission, by unanimous vote, adopted the motion to dismiss the Complaint.

CONCLUSIONS OF LAW

1. The Recommendation was filed in accordance with Section 2-18-101(a)(4) of the Plan.
2. The parties were properly noticed pursuant to HRS Sections 91-9 and 91-9.5.
3. This hearing was properly conducted in accordance with HRS Chapter 91 and Section 2-18-103 of the Plan.
4. This matter is properly before the Commission pursuant to Section 2-18-103 of the Plan, and the Commission has the authority to review a Neighborhood Board and/or a Neighborhood Board Member's action(s) and issue sanctions in accordance with Sections 2-18-103 and 2-18-104 of the Plan.
5. Pursuant to HRS Section 91-10(5), the Complainant has the burden of proof, including the burden of producing evidence, as well as the burden of persuasion by a preponderance of the evidence.

DECISION AND ORDER

Based on the foregoing, the Commission hereby finds that on April 25, 2018, Respondent Flora Obayashi did not violate Sections 2-14-101 and 2-14-123 of the 2008 Neighborhood Plan, as amended, as alleged in Complaint 2018-03.

Therefore, it is hereby ordered in accordance with Sections 2-18-101 and 2-18-103 of the 2008 Neighborhood Plan, as amended, that the Complaint is hereby dismissed as to Respondent

Flora Obayashi, Member of the Kahaluu Neighborhood Board No. 29.

DATED: Honolulu, Hawaii, March 29, 2019.

NEIGHBORHOOD COMMISSION

By



TYLER DOS SANTOS-TAM
Its Chair